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State, Nation, Citizen: Rethinking Repatriation

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List of Abbreviations

CCPP:	Commission Permanente / Permanent Commission
CIREFCA:	Conferencia Internacional sobre Refugiados, Desplazados y Repatriados de Centro América / International Conference on Central American Refugees
CPR	Comunidades de Población en Resistencia / Communities of Peoples in Resistance
FMNL:	Frente Farabundo Martí para la Liberación Nacional / Farabundo Martí National Liberation Front
ILO:	International Labour Organization
IRO:	International Refugee Organization
PAC:	Patrullas de Autodefensa Civil / Civil Patrols
POW:	Prisoner of war
UNRRA:	United Nations Relief and Rehabilitation Agency
URNG:	Unidad Revolucionaria Nacional Guatemalteca / Guatemalan National Revolutionary Unity

1 Introduction: the Problem of “Repatriation”

Since the first attempts in the early twentieth century to create a system for the international management of displacement crises, repatriation has been understood in terms of an “ideal” solution to the refugee, a means of returning the displaced to the bounded political society of the nation-state ensuring the restoration of stable and secure political order. As early as 1922 Fridjof Nansen, discussing repatriation under the heading “Final Solution” in a report on the first six months of his work as the League of Nations’ High Commissioner for Russian Refugees, commented that:

it is obvious... there can be no final and satisfactory solution of the problem created by the presence in Europe of 1.5 million refugees except by repatriation to their native land¹

This narrative of repatriation as ‘the most desirable durable solution’², however, has posed particular difficulties in the post-Cold War operations of the international community in the field of displacement management: the tensions between repatriation’s conflicting implications for both state sovereignty and human rights have proven far less easy to settle when repatriation has been *practiced* rather than theorised. For most of the twentieth century, repatriation was presented an idealised but impractical solution to displacement. In 1938, for example, John Hope-Simpson dismissed repatriation as belonging to the realm of:

political prophecy and aspiration... a programme of action cannot be based on uncontrollable speculation.³

With notable exceptions,⁴ this projection of repatriation as an essentially idealised but impracticable solution remained current until the 1980s, when a paradigm-shift, particularly within the UNHCR, saw the ideological creed of “voluntary repatriation” replaced by the active policy of “safe return”. This idea located itself within a development-human security nexus and embraced the changing language of state sovereignty as ‘responsibility’ and ‘responsibility’ as ‘protection’, opening up the political space for doctrines of humanitarian intervention.⁵ However, these changing practices raised as many ethical and foundational questions about the meaning of repatriation as they answered logistical and practical dilemmas about refugee crisis resolution, returning

¹ League of Nations, *General Report on the Work Accomplished up to March 15 1922 by Dr Fridrjof Nansen, High Commissioner of the League of Nations*, 15 March 1922

² UN High Commissioner for Refugees, *Note on Voluntary Repatriation*, 27 August 1980. EC/SCP/13, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68cce8> [accessed 12 December 2007]

³ Hope-Simpson, J., *Refugees: Preliminary report of a survey*, London, 1938, p.174

⁴ Most importantly (in terms of political thought) the 1945 post-Yalta repatriations in Occupied Europe and African independence movements in the 1960s and 1970s, discussed below.

⁵ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* available at: <http://www.iciss.ca/report-en.asp> [accessed 12 December 2007]

refugee studies scholars to the Arendtian⁶ question: how are the universal rights of man to be realised within the political order of sovereign national states? This poses further questions directly related to practices of repatriation: is “voluntariness” a necessary and/or sufficient corollary to the practice of repatriation to ensure respect for individual freedoms? Does the shift to the language of “safe return” constitute an objective opening for resolution or an erosion of the principles of refugee protection?⁷ How should the bonds between refugee and the nation-state complex be imagined through the process of restitution? Do refugees and their societies require restoration through humanitarian return or political repatriation? Where can we locate the idea and the practice of “dignity” in these processes?

This paper offers a recontextualisation of the problems posed by the idea of repatriation within the structures of the liberal-democratic international community by providing a historical contextualisation for the political concepts underpinning repatriation. This demonstrates that the essential difficulty in understanding refugee repatriation as a “solution” to displacement is a result of the fundamental problems of attempting to reconcile a political philosophy of universal human rights with the principle of nation-state sovereignty. The paper then argues that post-1985 attempts to reconceptualise repatriation were fundamentally flawed not only because they were largely prompted by a narrowing of the political space for asylum and the need to find alternative practical solutions rather than any foundational approach, but because in reducing theory to practice, repatriation was depoliticised into “return”, reducing the likelihood of durable solutions based on citizenship and the remaking of state-citizen bonds which required an explicitly political context. Examining empirical evidence, in particular from the case of Guatemalan “organised and collective” return from January 1993, the paper makes clear that refugee groups are often highly-organised political communities, whose decision-making abilities have long-been recognised (particularly in studies of unassisted repatriation)⁸ but rarely encompassed within official pathways to return. It argues that as demonstrated in Guatemala, recognition of this more direct and politicised refugee engagement in displacement resolution offers an opportunity to strengthen both concepts of refugee dignity and the durability of return.

Whilst recognising the fundamental importance of repatriation to the permanent solution of refugee movement, the paper uses social contract tradition to propose that this recognised “right to return” can only properly be expressed through the autonomous political involvement of refugees in a direct renegotiation of the content of citizenship with the state. This suggests a community-based approach that recognises the collective political identities of refugee groups may offer greater possibility for genuine state transformation through repatriation than individually-based return, as well as greater possibility for the expression of “dignity”, an ultimately more expansive and sensitive ethical concept in practical repatriation than that of “voluntariness”.

⁶ Arendt, H., *The Origins of Totalitarianism*, London, 1976 (2nd edn), pp.279-296

⁷ Quick, Chingono and Preston, *Social Applications of Refugee Law: Repatriation in Safety and Dignity, Vol I*, unpublished report, February 1995

⁸ Stein, B. and Cuny, F.C., *The Contemporary Practice of Voluntary Repatriation: Repatriation during Conflict, Reintegration amidst Devastation*, unpublished second draft, 22 February 1994

2 Literature

Despite the proliferation of work on the socio-economic aspects of refugee reintegration in recent years,⁹ as well as a growth in the number of area-based case studies of the effects of repatriation upon displaced populations and the communities to which they return,¹⁰ there has been very little research directed towards better understanding of foundational political thought underpinning ideas of repatriation. This has long been a recognised failing in refugee research: Allen and Morsink, for example, in their 1994 work, highlighted the lack of research into voluntary repatriation, commenting that ‘that which has been done has been on a legal parameter of return and on the operations aspects of specific moves’.¹¹ While this in part represented a historical lack of interest in repatriation during its Cold War hibernation, there has been little further development of ideas relating to return, at least in the domain of political thought, in the intervening decade.

Political debate – and hence the work of political and legal theorists – has tended to focus on the idea of “voluntariness” and its relation to the ethics of repatriation, as seen for example in Hathaway’s writings on ‘The Meaning of Repatriation’.¹² Few scholars have chosen to concentrate solely on the term ‘repatriation’ and its content: those that do, such as Warner’s ‘Voluntary Repatriation and the Meaning of Return to Home: a Critique of Liberal Mathematics’¹³ have tended to approach the issue from a sociological viewpoint of community and in opposition to the artificial order provided by imposed nation-state political constructs. Yet while this represents a valuable contribution to development-led discussions about the process of reintegration, it can also be argued that such an approach represents an evasion of, rather than an engagement with, the political dimensions that the idea of repatriation necessarily entails. Early commentators on the practice of repatriation were clear that both its importance as a theoretical contribution to refugee resolution and the obstacle to its practical implementation stemmed from the fact that it required the restoration of the state-citizen bond at the heart of liberal imaginings of the nation-state complex.¹⁴ However, modern scholars, even whilst repeating the accepted wisdom that:

the three durable solutions require the integration, citizenship or permanent status of a refugee into a society¹⁵

⁹ Repatriation, reintegration, rehabilitation and reconstruction: see for example Lippman, B. and Malik, S., *The 4Rs: the way ahead?*, Forced Migration Review, No.21, 2004 pp.9-12

¹⁰ Black, R. and Khoser, K. eds., *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*, Oxford, 1999

¹¹ Allen T. and Morsink H., eds., *When Refugees go home: African Experiences*, London, 1994

¹² Hathaway, J., *The Meaning of Repatriation*, International Journal of Refugee Law, Vol.9(4), 1997, pp.551-558

¹³ Warner, D., *Voluntary repatriation and the meaning of return to home : a critique of liberal mathematics*, Journal of Refugee Studies, Vol.7(2/3), 1994, pp.160-174

¹⁴ Hope-Simpson, J., *The Refugee Problem: Report of a Survey*, London, 1939; Nathan-Chapatot, R., *Les Nations Unies et les refugies : le maintien de la paix et le conflit de qualifications entre l'Ouest et l'Est*, Paris, 1949

¹⁵ Cuny and Stein, *The Contemporary Practice of Voluntary Repatriation*, p.6.

have often elected to retreat to the terminology of ‘return’ as an objective description, stating:

repatriation is the wrong term, because there has been no restoration of the bond between citizen and fatherland.¹⁶

While this may be descriptively accurate, such shifting terminology avoids rather than addresses the normative questions concerning the meaning of repatriation and its relations to the ideas of nation and state.

It would appear that the preoccupation with coining new corollaries and concepts to sit alongside “repatriation”, such as the less involved ideas of “return”, the objective concept of “safety” or the universally endorsed but ill-defined notion of “dignity”¹⁷ in part stem from this essential reluctance to engage with the political implications of repatriation and in part from the pressures of interested state-parties to de-politicise displacement management. This can be clearly seen from Quick et al.’s work on the implications of replacing ‘voluntary repatriation’ with ‘return in safety and dignity’.¹⁸ While the work recognises that return as a concept is related to geographical location rather than any more abstract notion of belonging to a “nation”, it primarily offers an analysis of the impact a shift to return would have on “voluntariness” as a protective concept, rather than any more fundamental implications of a shift away from nation-state conceptualisation of return.¹⁹ In this preoccupation with “solving” the dilemma mandated repatriation would pose to the Western international community’s human-rights based philosophy of political legitimation, academic work has echoed the concerns of the UNHCR and other members of the international community:

We perceive there is a Janus face to these proposals. For those co-coordinating the present research, their motive appears to be reactive, an attempt to secure in practice the fragmented spirit of the existing law.²⁰

This has resulted in an absence of genuine engagement with the idea of repatriation and proposals as to how this process itself could be reformed to meet the many-faceted political requirements of refugee resolution in an international political order of sovereign nation states claiming popular legitimacy.

Returning to in-depth study of the origins of modern repatriation policies in the early twentieth century is therefore important because these materials from the 1920s onwards clearly demonstrate the extent to which repatriations and population transfers were politically linked to the emergence of the nation-state and national rights. Yet many of the most thorough investigations of the contemporary dilemmas posed by the idea of repatriation lack any genuine historicisation: Zieck’s *Voluntary Repatriation: A Legal*

¹⁶ *ibid.*

¹⁷ Bradley, M., *Return in Dignity: a Neglected Protection Challenge*, RSC Working Paper No. 40, Oxford, June 2007

¹⁸ Quick et al., *Social Applications of Refugee Law*, Vol. 1

¹⁹ *ibid.* p.24

²⁰ *ibid.*, p.84

Analysis provides an excellent account of post-World War II political-legal thought on the subject, but is otherwise concerned with post-Cold War application.²¹ Loescher and Skran's work has touched on the subject as part of wider histories of refugee policy, but neither is concerned with in-depth analysis of the philosophical problems of repatriation.²² One of the few studies to offer any account of League of Nation approaches to repatriation as part of a historical account of the policy is Coles' still-unpublished 1985 report prepared for a UNHCR round-table conference, but this is largely narrative as opposed to analysis.²³ What is clear from a study of these sources and archival materials is that the difficult internal contradictions of 'voluntary repatriation' that dominate discussions over the meaning of return have remained essentially the same debates that dominated the discussions of the early twentieth century, namely the relation between the rights, duties and identities of individual, nation and state. This historicisation also helps us to understand the idea of repatriation as a tool or mechanism designed to meet specific geographic, temporal and political needs rather than an immediately "natural" resolution.

Two gaps in current literature on repatriation can therefore be identified. Firstly, there is a lack of historical depth to accounts of emergence of the doctrine of "voluntary repatriation": better historical conceptualisation would help to expose the political roots of the tensions inherent in this idea and its intended application. Secondly, contemporary work has failed to engage with the implications and political content of repatriation, preferring instead to focus on debating the supporting buttresses of "voluntariness" "safety" and "dignity". This is problematic because it has provided the policy space for repatriation to be elided into return without sufficient recognition of the consequent loss of political content inherent in the idea of repatriation itself. This paper argues that an historical approach to the relationship between the political foundations and practical applications of repatriation is thus a much needed supplement to existing works on return, providing a foundational basis for a political recontextualisation of repatriation.

3 The History of Repatriation

Repatriation, Population Exchanges and the League of Nations

It is generally recognised that the identity of "the refugee" in the twentieth century is inextricably linked to the development of the modern nation-state as the pre-eminent form of political organisation.²⁴ Refugees were symptomatic of the particular exclusivity of political identity conceptualised within a nationalist framework. Similarly, the development of international responses to the crisis of displacement had direct connections to hardening conceptualisations of territorially-bounded political nations as the legitimate embodiment of state sovereignty. To remake refugees into citizens was the

²¹ Zieck, M., *The UNHCR and Voluntary Repatriation: A Legal Analysis*, The Hague, 1997

²² Loescher, G., *The UNHCR and World Politics: A Perilous Path*, Oxford, 2001; Skran, C., *Profile of the First Two High Commissioners*, *Journal of Refugee Studies*, Vol. 1 No.3/4, 1988, p.277-296

²³ Coles, G., *Voluntary Repatriation, A Background Study*, unpublished report prepared for UNHCR round table in San Remo, 16-19 July 1985, p.2-28

²⁴ Arendt, H., *The Origins of Totalitarianism*, pp.279-296

evident solution: this required repatriation, or in the case that no state was prepared to recognise a right of return, assimilation into a new society based upon civic nationalist principles, with a consequent return to citizenship.²⁵

Repatriation, then, emerged as an element of international displacement management within a nation-state-based conceptualisation of rights-distribution. The word itself implies the prior existence of *patria* to which return is possible: it assumes not simply physical location but a political rapprochement, a rejoining of the community within some form of territorial state. It carries within it some notion of prior relationship or belonging (*repatriation*) between refugee and the *patria*. If this is understood as the nation, in a universe of nation-states the relationship is necessarily a political one: some form of citizenship or subjecthood as part of a wider political community. As this paper will demonstrate, this geopolitical assumption is also historical, based in the particular political structures and ideologies of early twentieth century Europe. This is of particular import in policy terms when considering many of the refugee-producing, fragile, marginalised post-colonial states of the contemporary global south.

International involvement in the facilitation of large-scale repatriation can first be seen in response to the problem of prisoner of war (POW) return following widespread displacement during World War I: this was Nansen's first repatriation-based task, and one which was largely unproblematic in terms of political thought, as the overwhelming majority of POWs wished to return "home".²⁶ Yet if the POW experience framed the operational terms of reference for future projects in the 1920s, far more interesting from the point of view of political theory were the implications for the idea of "repatriation" contained within the large-scale managed population movements that formed part of the "unmixing of peoples" in the Balkan region, most notably the compulsory population exchange between Greece and Turkey that resulted from the 1923 Treaty of Lausanne.

Hirschon's comment that the exchange of two million Greeks and Turks between 1922 and 1926 confirmed in and resulting from the 1923 Treaty 'was in no way repatriation'²⁷ is evidently true from both a factual-historical and sociological point of view. Around 1.6 million Turkish Greeks were expelled to Greece; around 300,000 Greek Muslims left Greece for Turkey: for these individuals the treaty was an expulsion, an exile from "home".²⁸ Many of those forced to leave had either already fled their homes (around 1.1 million Greeks) in the wake of Turkish advance and the burning of Smyrna and were refugees in Greece, or did so under protest (in the case of Turkish occupants of Western Thrace): what was being confirmed by Treaty was not the reaffirmation but the *denial* of any right to return to homelands that both groups had in cases occupied for centuries.²⁹

²⁵ Hope-Simpson, *The Refugee Problem: Report of a Survey*; Coles, G., *The Relationship of Protection to Solution in the Refugee Situation*, unpublished report prepared for UNHCR round table in San Remo, 16-19 July 1985

²⁶ Skran, C., *Profile of the First Two High Commissioners*, pp.278-279

²⁷ Hirschon, R. ed., 'Introduction' in *Crossing the Aegean: an appraisal of the 1923 Compulsory Population Exchange between Greece and Turkey*, Oxford, 2003, p.8

²⁸ *ibid.*, pp.8-9

²⁹ Barutciski, M., 'Lausanne revisited: population exchanges in International law and Policy', in Hirschon ed., *Crossing the Aegean*, p.31

However, in terms of political theory and application, the execution of the 1923 compulsory population exchange was an important influence on the later doctrine of repatriation, particularly in its replacement of “home” with the abstract conception of national belonging, and its overarching emphasis on homogenous group political identity within bounded territories as the key to stability and international security. There was a clear recognition from those involved in negotiating the terms of exchange that such a compulsory mechanism violated concepts of the right to freedom of movement: as Meindersma observes:

the representatives of the delegations present during the negotiation process...at no time attempted to justify the measure on legal grounds, but rather sought to deny responsibility for it.³⁰

Yet despite this separation of human right from state security in terms of the immediate impact of the agreement, it is equally clear that key figures such as Curzon believed exchange would provide, through the ‘unmixing of peoples’, for the long-term stability of the Aegean region through the nationalisation of political power structures and thus the exclusion of difference.³¹ This indicates that the concept of “repatriation” was absolutely central to political belief in the success of the Lausanne population exchange as the ‘most durable’ of the early twentieth-century treaties. Controversy surrounded not the political cipher of repatriation, but the fact it was mandatory for the affected population.³² The problem of Lausanne, at least for contemporary political thinkers, was not the nationalisation of the state but the uneasy implications that compulsory nationalisation had for liberal conceptions of individual freedom and the limitations of state power.

The emergence of the norm of voluntary repatriation in the 1920s thus stemmed from a desire to achieve reconciliation between the principles of liberalism and nationalism in relation to the displaced, and was established within the paradigm of shifting East-West relations following the 1917 Russian Revolution and the subsequent outpouring of refugees. Approximately one million Russian refugees fled the ensuing Civil War, placing a heavy financial burden on those Western European states hosting the populations and prompting the League of Nations to appoint a High Commissioner for Russian Refugees, Fridjof Nansen, on 21 August 1921, with the aim of securing ‘co-ordinated international action’ to address the problem.³³ As Skran’s biographical sketch of Nansen makes clear,³⁴ the initial strategy of the international community’s refugee efforts was to co-ordinate repatriation. Nansen’s involvement in facilitating an agreement for the repatriation of POWs in between the Soviet Union, Germany and the newly independent states from the dissolved Austria-Hungarian Empire in 1920 formed the basis of his ‘reputed sympathy

³⁰ Meindersma, C., *Population Exchanges: International Law and State Practice*, International Journal of Refugee Law, Vol.9 No.3, 1997, p.350

³¹ Barutciski, ‘Lausanne revisited’ in Hirschon, *Crossing the Aegean*, pp.25-34. Barutciski strongly endorses this line of reasoning.

³² *ibid.*, p.29

³³ League of Nations, ‘General Report on the Work Accomplished up to March 15 1922 by Dr Fridjof Nansen, High Commissioner of the League of Nations’, 15 March 1922

³⁴ Skran, *Profile of the First Two High Commissioners*

for repatriation',³⁵ as did his stress on the refugee aid designed to facilitate future Russian reconstruction, such as his encouragement of Czechoslovakian provision for the continued education of 5,000 Russian students.

However, despite this contemporary state interest on nation-state rights, there was real concern from liberal civil society concerning the need for the proposed repatriation of Russian refugees to occur only on an explicitly voluntary basis. Nansen was first forced to clarify his 'anomalous position'³⁶ on repatriation in 1922, when the outline of plans for a managed repatriation scheme between the Soviet Union and Bulgaria was met with uproar in the League of Nations assembly: Gustav Ador, then president of the International Committee of the Red Cross, implored the League:

we can not allow a single refugee to be compelled to return to his country against his will.³⁷

With Nansen's response stressing the voluntary component of these plans (returnees would be asked to sign a statement expressing that their repatriation was freely made), the commitment of the liberal West to an idea of voluntary repatriation that protected individual freedoms from the authoritarian (in this case Bolshevik) state was reaffirmed. Earlier League of Nations resolutions had also stated that:

This conference is of the opinion that no Russian refugee ought to be compelled to return to Russia.³⁸

The Times' editorial leaders formulated an implicit need for voluntary repatriation as protection against Soviet untrustworthiness, for 'the promise of immunity was a Soviet promise'.³⁹ Yet even voluntary repatriation as a planned active policy was quickly abandoned as Soviet-Bulgarian relations disintegrated throughout 1923 and rumours of Soviet execution of returnees spread.⁴⁰

Furthermore, the liberal formulation of voluntary repatriation became increasingly irrelevant to active policy as the problem of refugee-hood became entangled with that of statelessness. Following Soviet decrees in October and December 1921 on the 'Forfeiture of Soviet Citizenship by Certain Categories of Persons Residing Abroad', Russian refugees were left stateless by legal decree.⁴¹ The deliberate disowning of Russian citizens represented a new challenge in displacement management in which the concern was not protection against forcible repatriation of an unwilling citizen but the state's own lack of interest in claiming these citizens at all. Given the constraints of state sovereignty, repatriation was of no official use, and energies switched to assimilation and resettlement programmes. The transfer of technical aspects of refugee work to the International

³⁵ Marrus, M., *The Unwanted*, Oxford, 1985, p.87

³⁶ *ibid.*

³⁷ Skran, C., *Profile of the First Two High Commissioners*, p.281

³⁸ Coles, *Voluntary Repatriation, A Background Study*, p.18

³⁹ Leader, 'Russian Refugees and the Soviet', *The Times*, 27 August 1923, p.9

⁴⁰ *ibid.*

⁴¹ Coles, *Voluntary Repatriation, A Background Study*, p.18

Labour Organization (ILO) from 1924-1929 underlined above all the economic approach taken towards absorption of refugees and the solution of the crisis. Refugees were viewed by the ILO and High Commission in terms of their economic potential: the need was to secure employment and, through employment, assimilation. Although the economics of such an approach became increasingly laden with political difficulty in the depressed years of the 1930s, the political reasoning behind such strategies remained constant until the outbreak of the Second World War, including international attempts to address the German-Jewish refugee crisis that emerged from 1933, which immediately recognised the impossibility of any immediate programme of return.⁴²

A particularly important feature of the Nansen approach to refugee management was the specifically collective conception of refugee identity. There was no universal approach to the idea of the refugee in international politics. Nansen was first High Commissioner for Russian Refugees, defined as:

Any person of Russian origin who does not enjoy the protection of the USSR and who has not acquired any other nationality.⁴³

Similar formulations were later used to define Armenian, Assyrian, Assyro-Chaldean and German refugee groups. The identity of refugee was clearly premised upon the breakdown of state-citizen relations and the absence of alternative state protection. Importantly, however, the claim upon the state itself was understood in ethno-historical terms; ‘Russian origin’ qualified a refugee as deserving of international protection due to Soviet state behaviour. This implicitly recognised some form of national or community-based right to claim some form of citizenship or subjecthood in the state of origin based on group identity: i.e. that access to state protection (the absence of which was the key defining characteristic of the refugee) was connected to the idea of national as well as individual right. The breakdown of order which created refugees was thus understood as the breakdown of the protection of the community, suggesting that any form of ‘repatriation’ would require a double rapprochement of the individual *and* the nation-community with the structures of state power. As Arendt would later conceptualise the problem:

it gradually became self-evident that the people, and not the individual, was the image of man.⁴⁴

The inter-war regime, then, provided both the conception of “repatriation” as a durable solution providing international order while legitimising popular-national claims on state power and the formulation of “voluntary repatriation” as a sop to liberal concerns with the protection of the individual’s rights against illiberal authorities. Yet simultaneously, the inviolability of state sovereignty meant that this norm was almost immediately consigned to theoretic rather than practical solution. The period of negotiation from 1945-1951 would see such political theory crystallised and codified into the language of

⁴² Hope-Simpson, *The Refugee Problem: Report of a Survey*, 1939

⁴³ *A report by the High Commissioner for Refugees on Armenian and Russian Refugee questions, forwarded by the Director of the ILO*, Appendix II, 3 September 1926

⁴⁴ Arendt, *The Origins of Totalitarianism*, p.291

Cold War geo-political bipolarity, with one major exception: universal individualism was to be substituted for the specific collective entitlement that had formed the bedrock of the League of Nation's regime.

Convention Codification and Cold War Contestation

It is well-established that unprecedented levels of displacement followed the upheavals of World War II, with at least twenty and possibly thirty million uprooted in occupied Europe.⁴⁵ The search for solutions to the crisis saw the establishment of three international organisations within eight years, a period of intense political debate over the meaning of displacement and its implications for international order which closed with creation of the UNHCR in December 1950 and the signing of the Convention Relating to the Status of Refugees in July 1951 (1951 Convention). Repatriation, specifically *voluntary* repatriation, was at the centre of this debate, and acted as a cipher for growing East-West tension. The impact of Cold War politics on the perceived meaning of repatriation was to be significant.

In 1943, the Allied High Command established the United Nations Relief and Rehabilitation Agency (UNRRA): under military control, its mandate was to provide material support to displaced populations and prepare 'for the return of prisoners and exiles to their homes'.⁴⁶ The agency had no powers to resettle the displaced to third countries, but only to repatriate. To this end, the UNRRA was exceptionally efficient: by September 1945, the UNRRA had successfully repatriated three-quarters of the displaced in Europe, leaving only a "hard-core" of some 740 000.⁴⁷ This process operated with the assumption that repatriation was the natural voluntary choice: a League of Nations report published during the war had remarked that 'Foreign labourers in Germany... will certainly wish to return to their native lands following the war'.⁴⁸ This was in part because displacement was seen as a separate condition from "refugee-hood": the displaced were not necessarily suffering from the absence of theoretical state protection, but only physical separation from the nation-state territory. For the majority of those repatriated under UNRRA auspices, this was an unproblematic assumption, but it had become apparent by 1946 that there existed a minority of displaced persons who rejected repatriation as a solution to their exile – this "last million" were largely composed of displaced persons from Eastern Europe and in particular areas now occupied by the Soviet Union.

This presented a dilemma for Western liberal powers. The emerging discourse centring upon the concept of universal human rights presented a powerful ideological bulwark to state claims over individual citizens, at least within the paradigm of Western political thought.⁴⁹ Yet to Eastern bloc states, the perceived dilemma was mere artifice: Socialist Republics placed the collective above the individual, and thus any state that required the

⁴⁵ Loescher, *The UNHCR and World Politics*, p.34

⁴⁶ *Agreement for the United Nations Relief and Rehabilitation Association 1943*, Delhi, 1944, p.3

⁴⁷ Loescher, *The UNHCR and World Politics*, p.35

⁴⁸ League of Nations in Elliott, M. *The United States and Forced Repatriation of Soviet Citizens, 1944-47*, *Political Science Quarterly*, Vol. 88, June 1973, p.256

⁴⁹ As represented by the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217a(III), 10 December 1948

repatriation of the displaced should have such a claim enforced by the international community. This was particularly relevant because following the German invasion of Russia in June 1941 millions of Russian soldiers were captured: around 3.1 million by December 1941, who were joined in 1942 by over 2 million Soviet civilians working as forced labourers.⁵⁰ Some Russians, such as General Volotov, were direct collaborators with the German army, prioritising their aims of Communist overthrow over the dilemmas of collaboration. The majority of the displaced, however, were members of persecuted national minorities and economic classes who feared return to Stalin's authoritarian state. These citizens had, in effect, renounced their claim on Soviet citizenship. For the Soviet state, however, to acknowledge the existence of large numbers of Russian asylum-seekers was politically unthinkable. As late as 31 May 1944, the Soviet government was denying the existence of Russian-origin German troops.⁵¹ As this strategy of denial became increasingly implausible, the Soviet Union made clear its claim on these Russians (now Allied POWs) as citizen-traitors. This in effect was a political argument that the individual citizen could not break his obligations to collective national identity as represented through the state.

Initially, Allied High Command had little problem facilitating Soviet demands for total repatriation, as a result of geo-political and pragmatic considerations (the Soviet Union was still officially an Allied Power; there was a practical need to resolve the displacement crisis as quickly as possible) but also because repatriation appeared a philosophical possibility in a Europe now free from fascism and thus momentarily and superficially untied, while the political currencies of "nationalism" and "duty" were of high value in the immediate post-war UK and US. The impact of the Yalta agreements signed in February 1945 have been the subject of intense academic debate, but it appears that the terms of this tripartite agreement acted to quicken the pace and scope of forcible Soviet repatriation programmes already initiated independently by Allied states. Between May and September 1945, up to 60,000 Soviets were forcibly repatriated.⁵²

Although Britain and the United States refused to return citizens from areas of Soviet control which had not been incorporated pre-1939 (thus screening out Polish, Ukrainian and Baltic displaced), the hollowness of this attempt to use citizenship-ties to legitimate the high-political manoeuvres of the allied states in acceding to Soviet demands was exposed with repatriation of 50,000 Cossack refugees from south-east Austria who had formed part of the original wave of stateless Russian refugees in 1920: many held Nansen passports.⁵³ Yet these documents offered no protection for refugees whose status as citizens of their state of origin had now been acknowledged by the Soviet state. The refugees were under no illusion about the nature of this claim by the Soviet state. Reports clearly indicate their distress and terror at the prospect of return.⁵⁴ They, like Stalin, understood their claims of asylum as political acts, a deliberate renunciation of Soviet citizenship and appeal instead to the freedoms of national self-determination. The displaced referred to themselves as nations: their own conception of their identity was

⁵⁰ Elliott, *The United States and Forced Repatriation*, p.255

⁵¹ Bethell, N., *The Last Secret*, London, 1987 (2nd edn.), p.20

⁵² Elliott, *The United States and Forced Repatriation*, p.267

⁵³ Bethell, *The Last Secret*, p. 164

⁵⁴ *ibid.*

collective and political. For example, in May 1945 British troops at Bleiberg encountered 200,000 Croat soldiers protecting half a million Croatian civilians: a Croatian General described this as ‘an emigration of the whole Croat nation’, who refused to live under Communism. The British commander refused to let the soldiers cross the British-American line: later it was concluded that this led to ‘extensive and indiscriminate slaughter’ by Tito’s allied army.⁵⁵ The process of forcible repatriation became increasingly violent: one notorious incident occurred on 29 June 1945 when the attempted repatriation of 154 Soviet POWs from Fort Dix in New Jersey, required the use of tear gas and sub-machine gun fire to force the Russians from their barracks, after which it was discovered that three men had committed suicide.

These violent protests made increasingly visible the political contradictions between the rhetoric of individual freedom used to legitimate Western government power as protection (and claimed as the motive for the War) and the practices of compulsory repatriation. In Britain, it was the army who led the resistance to forcible repatriation, with Field-Marshal Alexander refusing to order the forcible repatriation of Soviet citizens, writing on August 23 1945 to the War Office that such practices were ‘quite out of principle with the principles of democracy and justice as we know them’,⁵⁶ while by October Washington had similarly backed away from the policy of forcible repatriation, fearing strong public protest ‘on grounds of humanity and traditional American views of asylum’.⁵⁷ The notion of “voluntariness” as a protection against forced return was required to satisfy the ethics of a liberal notion of repatriation: the shift in language was also politically convenient as it reinforced the rapid deterioration in East-West relations. Thus, it was with the intention of moving away from a blanket-repatriation policy and with the aim of removing the “last million” from Europe’s displaced person camps that the UNRRA was succeeded by the International Refugee Organisation (IRO) in 1947. The West’s post-Yalta determination of the need for “voluntariness” placed a significant obstacle in the way of Eastern bloc demands that all citizens be repatriated. United Nations General Assembly Resolution 8(I), establishing the committee that would later establish the terms of the IRO, indicates a clear attempt to reconcile Western political need for voluntary repatriation with that demands of the East for the return of citizen-traitors, stating that:

no refugees or displaced persons who have finally and definitely...expressed valid objections to returning to their countries of origin...shall be compelled to return

but immediately excluding ‘war criminals, quislings and traitors’ from such provisions.⁵⁸ The preparatory works for this successor organisation offer an insight into the definitive break in joint East-West approaches to displacement management. At the centre of dispute was a fundamental disagreement over exactly who, or what, was a refugee. The Eastern states argued that Europe’s crisis was essentially one of displaced persons rather than refugees. In Soviet political philosophy there was no political but only a logistical

⁵⁵ Addis, J. to British Embassy Belgrade, 5 September 1945 in Bethell, *The Last Secret*, WO170/4461

⁵⁶ Alexander, H. to WO, 23 August 1945, Bethell, *The Last Secret*, WO 204/359

⁵⁷ British Embassy in Washington to Bevin, E., 4 October 1945 Bethell, *The Last Secret*, FO 371/47907

⁵⁸ United Nations General Assembly Resolution 8(I), 8 February 1946

dimension to the need for international coordination, because:

il ne reste plus que le problème de repatriement des personnes déplacées par les Nazis et similaires.⁵⁹

Refugees, in Soviet terms, were those who required protection precisely because they were stateless and therefore *unrepatriable*. If, however, a state claimed an individual in exile and therefore offered the possibility of return, the individual was by definition a displaced person and had neither right nor need of the political protections offered to a refugee. According to this narrative, the Second World War had removed the barriers of fascism that had required the protections of asylum: all those still claiming refuge were only hoping to avoid extradition and judgement for their crimes against nation and state.⁶⁰

In contrast, Western representatives were concerned to ensure that the newly-established IRO met:

le devoir aux nations-unies de donner un exemple pratique de la véritable signification des droits de l'homme⁶¹

by recognising the long-standing right to *non-refoulement* which in effect required a practice of voluntary repatriation and resettlement for those who refused return. In effect, this was an assertion that asylum could legitimately be claimed on the basis of an individual's political beliefs and therefore that refugees, – and thus the political conditions requiring refugee protection – continued to exist in post-War Europe. The '*noeud de la controverse*'⁶² was essentially the fact that political refugees were claiming a right not to return to their country of origin by recourse to the language of the rights of man. This was an argument firmly located within a liberal paradigm and thus entirely unacceptable to the Eastern bloc states, who withdrew from participation in the IRO regime, effectively cementing its foundations in Western political philosophy. Yet the debates in 1946 underlined one important shared conception of the refugee: that their identity rested upon being unrepatriable. Dispute concerned the conditions and the manner of repatriation, and the extent to which the individual had the right to cede from a particular form of political society. However essentially both sides accepted that repatriation should always be "voluntary"; the East because all non-criminal displaced were claimed to have a natural patriotism and therefore desire to return, and the West because its liberal political philosophy required a notion of positive individual choice.

Despite the IRO's constitution giving primacy to repatriation as the preferred solution to European displacement, with resettlement as a secondary alternative solution, the breach with the East and the frost or Cold War geo-politics very quickly saw a distinct shift to an almost total focus upon resettlement. By the date of its dissolution on 15 February 1952,

⁵⁹ There remains only the problem of repatriation for those displaced by the Nazis'; Yugoslav representative quoted in Nathan-Chapatot, *Les Nations Unies et les refugies*, p.101

⁶⁰ Ukranian representative quoted in *ibid.*, p.108

⁶¹ 'The duty of the United Nations to give a practical example of the true significance of the rights of man'; Netherlands representative quoted in *ibid.*, p.103

⁶² 'the heart of the controversy', *ibid.*, p.107

the IRO had resettled one million refugees; it had repatriated only 73,000.⁶³ However, the IRO's high operational costs (at their peak three and a half times the combined budgets of the rest of the UN) and UK and US fears that the IRO would institutionalise the refugee problem as an indefinite responsibility of overseas resettlement countries led to the organisation's dissolution.⁶⁴

The IRO's successor organisation, the UNHCR, continued to hold a theoretical mandate to protect, repatriate and resettle refugees, but in practice the organisation concentrated almost exclusively on protection and resettlement. In the climate of the Cold War, the concept of repatriation had become a political irrelevancy. Even voluntary repatriation was only useful as a bulwark of liberal political thought against Soviet demands for mandated return: a justification for inaction. The contents of the 1951 Convention confirm this decline in relevancy: repatriation is only mentioned twice, and in both cases obliquely. It is cited as one of the six cessation clause cases which invoke the ending of refugee status, and the requirement for voluntariness is implied by Article 33's prohibition of the practice of *non-refoulement*⁶⁵ In this sense, the 1951 Convention added very little to the political theory of repatriation, except perhaps to confirm its absence from the realms of practical solution.

Arguably a more important contribution to the concept of repatriation concerned its reworking of the definition of a refugee: while the IRO constitution had continued to follow a largely group-based determination of refugee status (containing, for example, specific clauses concerning Spanish Republican refugees), the 1951 Convention provided an individual definition requiring 'well-founded fear of persecution'⁶⁶ in terms of the individual and provided for no group or community-based collective identity. While it was hardly intended as a fully universal definition (temporal and geographical restrictions were notably not removed until the 1967 Protocol Relating to the Status of Refugees),⁶⁷ this change did have further important implications in terms of repatriation procedures: the stripping of the collective national dimension of refugee-hood clearly placed further distance between the individual refugee and any claim on group rights to territorial return. Situated in the emerging discourse of liberal universalism and human rights, it affirmed the primacy of the individual's freedom over that of the state, but in doing so circumvented the national-collective dimensions of repatriation that had been present throughout twentieth century execution of such projects. This was of little importance, however, to an international community caught in a Cold War paradigm in which "voluntary repatriation" was ideological justification for liberal superiority and a preventative bulwark against return, rather than a call for action.

⁶³ Loescher, *The UNHCR and World Politics*, p.39

⁶⁴ *ibid.*, p.41

⁶⁵ Article 1C paragraph 4 of the *Convention relating to the Status of Refugees*, 28 July 1951, states that 'this convention shall cease to apply to any person... if... he has voluntarily re-established himself in the country which he left'

⁶⁶ Article 1A paragraph 2, *Convention Relating to the Status of Refugees*, 28 July 1951

⁶⁷ United Nations General Assembly, *Resolution 2198(XXI)*, 16 December 1966

A Return to Repatriation

It is important to note that despite the Cold War paradigm that determined political understandings of the idea of repatriation for the three decades following the 1950s, the practice of active repatriation was never entirely absent from the international refugee regime. In particular, repatriation was a key element in the politics of self-determination that prompted African decolonisation and the establishment of independent nation-states in the region. The return of refugee groups who fled the violence of anti-colonial struggles represented an important symbolic legitimisation of independent African sovereignty. Beginning with the case of Algerian return in 1962, and continuing to encompass Mozambican and Angolan returns in 1974-5, Zimbabwean return in 1978-9 and even Namibian return in 1988, this series of refugee repatriations were located firmly within the political philosophy of national popular sovereignty.⁶⁸ Only “the people” could legitimately exercise the state’s sovereign powers: their right to self-determination had been expressly confirmed by the United Nations General Assembly,⁶⁹ in the particular context of decolonisation. The “civilising mission” of European colonialism no longer had any justificatory political power: such rule was illegitimate and therefore return, occurring as it did at the point of independence, was a symbolic reclaiming of the state, not only by individuals as citizens, but by the nation as political community. In this sense, repatriation reinforced the status quo international political order and the nation-state system of rights distribution by reinforcing the foundational importance of self-determination and popular sovereignty to the dominant liberal concepts of political rule. Practically, these returns were therefore unproblematic because there was no ethical dilemma: a fundamental change of circumstance had occurred, and return was voluntary or even spontaneous.⁷⁰

Yet this African construction of repatriation as a form of national liberation had extremely limited application, because even as it attacked the practice of colonial rule brandishing the liberal principles of self-determination, it was reinforcing the legitimacy of the nation-state idea, a form of order particularly incongruous within African historical political traditions. Fragile states were fearful of the doctrine of repatriation as self-determination: the 1969 Organization of African Unity regional ‘Convention Governing the Specific Aspects of Convention on Refugee Problems in Africa’⁷¹ deliberately de-politicised asylum, characterising it as a ‘peaceful and humanitarian act’⁷² precisely in order to protect against the spectre of “refugee warriors” and control the unity of national identity. Independent sovereign states and the governments which exercised their powers on behalf of the people had little interest in continuing practices of transformative repatriation that might threaten their own political order.

⁶⁸ Coles, *Voluntary Repatriation, A Background Study*, pp.62-113

⁶⁹ United Nations General Assembly, *Resolution 1514(XV)*, 14 December 1960

⁷⁰ Coles, *Voluntary Repatriation, A Background Study*, p.67

⁷¹ OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969

http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf, [accessed 12 December 2007]

⁷² Article 2, paragraph 2, *ibid.*

The causes and consequences of a narrowing of asylum space in Western states throughout the 1970s and 1980s have been well-documented elsewhere.⁷³ It is sufficient here to summarise that global economic downturn post-1973, a shift towards higher number of global south refugees seeking asylum in the North (as opposed to the original political paradigm of East-West flows), a consequent decline in the ideological value of refugee and increased suspicions over the motives for flight (perhaps best exemplified by the case of the Indo-Chinese boatpeople)⁷⁴ combined to create an increasing reluctance on the part of Western states to offer asylum or resettlement. Yet continued political instability (particularly within the fragile states on the margins of the global community being used as sites from superpower ‘proxy wars’) continued to result in mass flows of refugees and rising numbers of protracted refugee situations, particularly in Africa.⁷⁵

As political appetite for asylum and resettlement narrowed, there was a clear need to find an ethical alternative solution to displacement: the obvious answer was a return to repatriation. However the difficulty was that ethical repatriation, as illustrated above, had become inextricably linked with the idea of “voluntariness” and a requirement for fundamental change within the state of return prior to any official involvement in repatriation programmes. These corollaries had been added in order to demonstrate the primacy of human rights and designed to prevent rather than promote action. The challenge now, as perceived by the UNHCR and other interested international parties, was to effect a shift from protection towards facilitation and promotion whilst remaining in accordance with the liberal principle of freedom of individual choice. The UNHCR’s Executive Committee’s (Excom) Conclusion No.18 was published in 1980 emphasising a continued commitment to voluntary repatriation as:

...generally, and in particular **when a country accedes to independence**, the most appropriate solution for refugee problems...

and stressing:

that the essentially voluntary character of repatriation should always be respected.⁷⁶

This ultimately represented a restatement of the UNHCR’s existing interest in facilitating repatriations: with its connection of repatriation to national independence, the statement also indicates a continued recognition of national and political dimensions of return in the political thought of the international community. It also emphasised the importance of refugee involvement in the process of return and information-gathering.⁷⁷ Yet early repatriation programmes appeared to view such standards as derogable: the 1978 repatriation of Rohingya from Bangladesh was accomplished using such strategies as the curtailment of food rations in camps (in the hope of encouraging an early decision in favour of return) and as the object of bilateral state politics between Bangladesh and

⁷³ See for example, Gibney, M., *The Ethics and Politics of Asylum*, Cambridge, 2004

⁷⁴ Loescher, *The UNHCR and World Politics*, pp.140-147

⁷⁵ *Ibid.*, pp.203-209

⁷⁶ Paragraphs A and C, UNHCR Executive Committee, *Conclusion No.18 (XXXI)*, 1980
<http://www.unhcr.org/publ/PUBL/41b041534.pdf> [accessed 12 December 2007] (my italics)

⁷⁷ Paragraph E, *ibid.*

Burma.⁷⁸ Crisp's study of the return to Ethiopia of refugees from Djibouti represented an early critique of the politics of repatriation, as he underlined the lack of any fundamental change of circumstance in Ethiopia, the Djibouti government's use of intimidation tactics to force return and the UNHCR's apparent acquiescence to state realpolitik.⁷⁹ Although the norm of "voluntariness" was still a necessary rhetorical guarantee, attempts to use repatriation as a means of solution in on-going conflict made the gap between language and feasible practice increasingly evident.

As the 1980s progressed, a marked shift in language was identifiable as theory followed practice by seeking to justify the new and more pragmatic approach to repatriation. Other scholars have documented the ideological struggle which occurred within the UNHCR between the "fundamentalist" and "pragmatic" lobbies concerning the importance of the principle of voluntariness and other protection ideals, and which helped to stimulate the institutionalisation of 'repatriation culture'.⁸⁰ Excom's Conclusion No. 40 of 1985, represented a summation of various political and efforts that year to restate the importance of repatriation.⁸¹ While reiterating the voluntariness formula, it also focused on the root causes of refugee exodus and the need for prevention by states of origin.

Significantly, Conclusion No. 40 also linked this to the need for active promotion, rather than simple facilitation, of voluntary repatriation:

the responsibilities of States towards their nationals and the obligations of other States to promote voluntary repatriation must be upheld by the international community.⁸²

as well as endorsing the High Commissioners 'legitimate concern' for the consequences of return. By 1987, Inter-Office Memoranda from the Director of the UNHCR's Division of Refugee Law and Doctrine were referring to voluntary repatriation as the 'most desirable' solution that 'whenever possible' should be 'promoted and facilitated'.⁸³ The language of 'return in safety and dignity' was also emerging as means of ensuring that individuals could return to their 'home'.⁸⁴

Much as had occurred at the end of the Second World War, the end of the Cold War and fall of the Berlin Wall from 1989 was perceived by the international community to offer

⁷⁸ Reid, A.K., *Political Studies in the Voluntary Repatriation of Refugees*, unpublished Ph.D. thesis, August 1992, pp.214-244

⁷⁹ Crisp, J.F., *Voluntary Repatriation Programmes for African Refugees: A critical examination*, British Refugee Council Working Paper Series, Vol.1, No.2, Oxford, December 1984

⁸⁰ Barnett, M., *UNHCR and Involuntary Repatriation: Environmental Developments, the Repatriation Culture and the Rohingya Refugees*, draft article prepared for the ISA, 16-20 March 1999. Also available at <http://www.ciaonet.org/isa/bam01/> [accessed 12 December 2007]

⁸¹ Such as the round table convened by the UNHCR and the International Institution of Humanitarian Law, in San Remo 16-19 July 1985

⁸² Paragraph D, UNHCR Executive Committee, *Conclusion No.40 (XXXVI)*, 1985 <http://www.unhcr.org/publ/PUBL/41b041534.pdf> [accessed 12 December 2007]

⁸³ UNHCR, Inter-Office Memorandum No.5, UNHCR/IOM/5/87, 10 February 1987, p.1

⁸⁴ Paragraph J, UNHCR Executive Committee, *Conclusion No.65 (XLIII)*, 1991 <http://www.unhcr.org/publ/PUBL/41b041534.pdf> [accessed 12 December 2007]

an opportunity for the resolution of a multitude of protracted refugee situations, in part because the end to geo-political bipolarity appeared to offer an opportunity to untie some of the philosophical knots that the inherent contradictions in voluntary repatriation presented. Without the existence of the East, and with the global south to be democratised with Western aid, the need for protection *against* repatriation no longer existed: if every state was to be liberal, democratic and independent, all could have human rights guaranteed by their state of origin and all would voluntarily return home. In short, the conditions for the existence of refugee-hood would largely disappear. It was this apparent political opening that led High Commissioner Ogata to famously call in November 1991 for a ‘year of voluntary repatriation’.⁸⁵

Yet the ‘moment of euphoria’ was brief (Ogata, 1992). The familiar narrative of rising ethnic nationalism, state fragmentation and group persecution from Bosnia to Rwanda requires no repetition: the ethics of Ogata’s prized notion of “preventative protection” became increasingly suspect and were definitively exposed with the Srebrenica massacre in 1995. The tension between state realpolitik and the principles of liberal universalism used to legitimise Western power was evident once more. Repatriation or “return” could no longer be painted as a pathway to world citizenship. Instead, the last decade has seen a determined attempt to place return with a development paradigm, beginning with the 1985 recognition of the High Commissioner’s legitimate interests in the consequences of return. An increased emphasis on local community integration, socio-economic sustainability and longer-term partnership with the United Nations Development Programme now cast return as a sociological rather than political process.⁸⁶ While the recognition of long-term reintegration needs and a focus on communities as a whole rather than only returnees were important and valuable operational shifts, their impact upon the theory of refugee solutions was more problematic.

Voluntary repatriation in safety and dignity might appear a reinforced version of the repatriation norm that had emerged in the early twentieth century, but there were two major indications that these changes portended substantive re-thinking of the idea of repatriation within the UNHCR and interested donor states. First was the evident split between theory and practice: while UNHCR continued to pronounce on the inviolability of such norms, it was evident from camp reports that return was often neither safe, dignified nor wholly voluntary.⁸⁷ Second was a marked shift in language and intention. Most commentary has focused upon the shifting boundaries of inclusion between ‘voluntariness’ and ‘safety and dignity’, with the implication that return was to become an objectively-measured process concerning ‘safety’ rather than a subjective and individual choice.⁸⁸ This created great difficulties for liberal political philosophy, because it removed still further refugee agency, and replaced it with institutional and state-based direction (which proved itself dangerously complacent in a series of repatriations, including the

⁸⁵ Ogata, S., quoted in Stein, B. *Policy Challenges Regarding Repatriation in the 1990s: is 1992 the year for Voluntary Repatriation?*, commissioned for the Program on International and US Refugee Policy, Fletcher School of Law & Diplomacy, Tufts University, February 1992

⁸⁶ *UNHCR Voluntary Repatriation Handbook* 1996

⁸⁷ Quick et al., *Social Applications of Refugee Law*, Vol. II

⁸⁸ *ibid.*, Vol I, pp.22-36

second Rohingya expulsion from Bangladesh in 1994-5).⁸⁹

However, less remarked-upon and arguably more important for the concept of repatriation was its gradual elision into the language of return. This was not a question of semantics, nor simply a descriptive retreat into return as a more accurate portrayal of what was occurring in the field, as suggested by Cuny and Stein.⁹⁰ Return, like safety, deliberately offered a lower threshold for international action to resolve refugee exodus because it was a depoliticised concept that focused upon the idea of movement and an untheorised concept of “home”, and in doing so provided the means for removing refugees from countries of asylum without the requirement of political solution within the country of origin by focusing on local or area-based return. The idea of repatriation is inextricably linked to a nation-state conception of political-territorial power and the distribution of rights through citizenship. Refugee-producing states’ frequent lack of political capacity now suggested a requirement to, in effect, abandon the nation-state paradigm of repatriation, because repatriation required a state with which a political community could connect. This was impossible in the absence of viable state-structures such as in the cases of Somalia, Zaire (later the Democratic Republic of Congo) or Afghanistan, but also an extremely distasteful solution to authoritarian or client-patron states that had little interest in political reform but every interest in the return of refugees with accompanying development aid (such as Ethiopia or Guatemala). The discourse of return, in contrast, depoliticised refugees and required far less political commitment to inclusive sovereignty than repatriation from either the state of origin or the international community.

This process of depoliticisation represents a far more fundamental challenge to the idea of repatriation as a durable liberal solution to displacement than any departure from strict “voluntariness”. While “voluntariness” had always been an uneasy compromise between liberal and national principles, the new concept of ‘return’ attempted to depart from the foundational understanding of a refugee as a victim of political persecution without access to state protection, repeatedly enforced since the inception of the refugee regime and a principle even agreed upon by both Western and Soviet blocs in the midst of post-World War II debate. Yet the remedy to such a breach of political trust that makes refugees must self-evidently be political if it is to represent a complete and lasting remedy. Observing the continued cycles of displacement that operate in areas such as the Great Lakes or the Afghanistan-Pakistan border, humanitarian “return” is empirically not providing a durable solution to displacement.

The contemporary split in international practice between return and repatriation returns political thought to the central difficulty of the exclusivity of national sovereignty and the nation-state’s effective monopoly on the realisation of human rights. Given the clear failings of the “unmixing of peoples” into national states to result in political stability in large parts of the global south, particularly when such entities are also required to respect liberal democratic norms in their political practice,⁹¹ the rise of ethno-nationalism in the

⁸⁹ Barnett, *UNHCR and Involuntary Repatriation*

⁹⁰ Cuny and Stein, *The Contemporary Practice of Voluntary Repatriation*, pp.6-9

⁹¹ Sandbrook, R., Transitions without consolidation: democratization in six African cases, *Third World Quarterly*, Vol.17, No.1, March 1996, pp.69-88

post-Cold War years might suggest a need to recognise the failings of repatriation as a possible solution to displacement, and accept a more minimal standard of return as disenchanting best practice. Yet such an approach signals a very real defeat of the principles of protection that encouraged the foundation of an international refugee regime, because political power continues to be distributed within a national-state-based system legitimised through citizenship rights. What instead is needed is a recontextualisation of repatriation practices as a dynamic, political process that reaffirms liberal “voluntariness” by encouraging direct refugee negotiation of the conditions of return, recognises the collective-national identities of refugee groups and seeks as a political community reforming a new social compact through state transformation, effecting *empatriation* rather than *repatriation*. A historical precedent for such a new formulation can be found in the case of Guatemala’s collective return.

4 Guatemalan Return

Background

The voluntary return of the Guatemalan displaced in the 1990s and their relationship with the key political ideas of state, nation and citizen can not be understood without comprehending the historical roots of the modern Guatemalan. The Liberal Revolution of 1870 and the consequences of the “Ten Years of Spring” under the Presidencies of Arevalo and Arbenz profoundly impacted upon the Guatemalan state’s understanding of its relationship with the peasant-indigenous majority of its population, creating a militarised state at the service of an economic elite and effectively eliminating any political space for an active construction of citizenship rather than subjecthood.

The Liberal Revolution of 1870, under the stewardship of President Rufino Barrios, signalled the development of a “modern” economic structure founded upon cash-crop exportation from large-scale coffee *fincas* (estates) depending on the cheap labour of peasant migrant workers, or *journaleros*. State expansion to protect the interests of the agricultural oligarchy and ensure their access to cheap indigenous labour through the forced-labour quotas (*mandamientos*) led to the simultaneous incorporation and marginalisation of the rural indigenous within the nascent capitalist economy.

Under the two reforming presidencies from 1944-1954 of first Aravelo and then Arbenz, there were attempts to open space for political discussion and initiate welfare reforms. Arbenz then sought to address the gross inequality in land distribution through the 1952 Agricultural Reform law, targeting the dormant holdings of foreign companies such as the American-owned United Fruit Company for expropriation and redistribution. These largely democratic reforms alarmed the arch-conservative Guatemalan economic elite as well as the US government, who engineered a CIA-sponsored military coup in 1954, bringing the reactionary General Castillo Armas to power and halting the state’s moderate steps towards gradual national integration on the basis of citizenship.⁹²

⁹² For a full history of this period see Kinzer S. and Schlesinger S., *Bitter Fruit: the story of the American Coup in Guatemala*, London 1999 (2nd edn.)

Following conservative repression of a counter-coup by junior officers within the Army in 1960, a low-level civil war began in 1961: this conflict was to last thirty-six years and cost a quarter of a million lives.

Despite being described in the language of Cold War geo-politics, Guatemala's Civil War was in fact a contestation for the meaning of the state, the identity of the nation and the content of citizenship. This is today understood by many of the returned displaced as part of the five hundred year-old historical narrative of the Spanish conquest.⁹³ The intentions of the *tierra arrasada* (storched earth) campaign directed by three successive presidents from 1980-1983 (under Lucas Garcia, Rios Montt and Mejia Victores, reaching its peak under Rios Montt in 1982) were labelled as genocidal following post-conflict investigation by the UN Commission for Historical Clarity.⁹⁴ Largely as a result of this campaign, it is estimated that one hundred and fifty thousand refugees eventually crossed the Mexican border, some forty-six thousand to be officially recognised by the Mexican government and the UNHCR and housed in camps along the Chiapas border.

The indigenous communities who formed over ninety percent of the Guatemalan refugee population existed historically on the margins of the state: state policy was focused upon economic exploitation as opposed to protection of these groups, who were firmly positioned by the Guatemalan elites as requiring no incorporation within the political nation who claimed a right to state control. Thus, there was never an inclusive 'patria' in Guatemala for the refugees, who largely existed outside state-based political order on ethno-cultural grounds. In this way, 1980s Guatemala represents a "typical" example of an exclusionary patron state; other examples might include contemporaneous Rwanda or Burma. Its early conception of repatriation also followed "typical" state-based processes.

Repatriation and State Control

As early as July 1982, when President Rios Montt published offer of a political amnesty following his own military coup,⁹⁵ the Guatemalan state demonstrated an interest in the return of the displaced as a means of legitimising continued rule, particularly in relation to international perceptions of the state's right to power. However, relation to the refugee groups in Mexico was complicated by the fact that the army (which controlled the state's infrastructure) identified these displaced as subversives, aiding and abetting the guerrilla. The refugee's presence on the Mexican-Guatemalan border was thus conceptualised as a threat to the continued existence of the oligarchical Guatemalan state: when by mid-1983 the army had acknowledged that 'as long as the refugee problem exists, we can not win the war', they were speaking of repatriation not as a pathway to national inclusion, but to the securing of state control over a "renegade" population group.

This strategy formed part of a massive expansion of the state into previously marginalised areas which followed the *tierra arrasada*. Many of these areas in the Ixcán and Petén had only been colonised in the 1960s and 1970s and were almost totally abandoned following

⁹³ Interview, Primavera, Guatemala, 23 June 2007

⁹⁴ Commission for Historical Clarification, Guatemala: Memory of Silence, 1999, <http://shr.aaas.org/guatemala/ceh/report/english/toc.html>, [accessed 12 December 2007]

⁹⁵ Manz, B., *Refugees of a Hidden War: the Aftermath of Counterinsurgency in Guatemala*, Albany, 1988, p.30

the state-sponsored terror of 1981-82. Historically, '*la presencia del estado fue sumamente débil*'.⁹⁶ Yet from 1982 onwards, Ixcán (although to a lesser intensity than Ixil or Chisec) was designated as one of five national *polos de desarrollo*, or development poles.⁹⁷ This introduced a massively militarised state-army presence into the area, as part of a programme of repopulation and control, centring on the construction of model villages and a stranglehold on the distribution of resources. These strategies allowed the army to isolate, control and subjugate the indigenous population by expanding state (army) presence while simultaneously reducing community autonomy through the careful organisation of physical space. Peasant communities had previously been spread over wide areas, with families building houses close to their land-holdings: in the new model villages, houses were built in close proximity and travel to outlying land tightly controlled, reducing autonomy and increasing dependence, particularly as the army retained authority over the distribution of all economic resources and other aid. Although following the restoration of civilian government in 1985 the 'patriotic duty' to vote was stressed in government literature, there was no interest shown in deeper political participation: speeches were not translated into indigenous languages, there was no voter education and the emphasis was placed upon the vote as a formal endorsement of the state rather than an opportunity for independent thought, political debate or opposition.⁹⁸

The *Patrullas de Autodefensa Civil* (Self-Defence Patrols, PAC) were perhaps the institution of reconstruction most feared by the displaced. Introduced in 1982 by Rios Montt, these obliged all men from 18-55 to patrol in order to defend their local community area. While the exact structures differed from region to region, all PAC required a significant time contribution or the payment of fines to pay for replacements and were involved in local intelligence gathering and army sweeps as well as patrolling the village boundaries. The PAC transformed village social structures by creating a new elite of Civil Patrol commanders who held considerable personal power and were able on occasion to use this with impunity to manipulate local village politics to their advantage and 'undercut the traditional conflict-solving mechanisms within the community'.⁹⁹ By breaking down community bonds and creating new vertical bonds of allegiance, the army-state's power was increased.

Rios Montt's June 1982 political amnesty drew some internally displaced back to their communities from the mountains,¹⁰⁰ but the continuing violence (the Plan de Sanchez massacre in Baja Verapaz occurred in which 250 Achi Maya were killed occurred only a month later on 18 July 1982) meant that few trusted the state's promises and many of those who did return to their communities did so only out of desperation, even if this was officially characterised as 'spontaneous' return. From 1984 the UNHCR had helped to facilitate repatriation of those who actively wished to return to Guatemala from Mexico, but the first three years of this project saw only 1042 refugees repatriate.¹⁰¹

⁹⁶ 'historically, the state's presence was very weak'; Garst, R., *Ixcán – Colonización, Desarraigo y Condiciones de Retorno*, Guatemala, 2 October 1993, p.51

⁹⁷ *ibid.*, p.52

⁹⁸ REMHI/OHDAG, *Guatemala: Nunca Mas*, Guatemala, 1998, pp.291-295, 304-318

⁹⁹ Manz, *Refugees of a Hidden War*, p.74

¹⁰⁰ Interviews, Ixcihuasis, 5 July 2007

¹⁰¹ Figures from Manz, *Refugees of a Hidden War*, p.153

In 1986, however, the Guatemalan state had officially returned to civilian government under the presidency of Vinicio Cerezo, who pledged to bring the years of military terror to an end. By October 1987, he had initiated talks with the *Unidad Revolucionaria Nacional Guatemalteca* (Guatemalan National Revolutionary Unity, URNG) and formed a *Comité Nacional para la Reconciliación* (National Committee for Reconciliation). While unable to break the power of the military and para-military establishment, leading to continuing human rights abuses, these initiatives were important steps towards the restoration of a civil state. The symbolic importance of refugee return was recognised by the new regime. Cerezo's wife in particular, Lic. Raquel Blandon played a key role in attempting to persuade refugees to return to Guatemala, visiting the Mexican camps and talking with representatives. In 1986 the *Comisión Nacional para la Atención de Repatriados, Refugiados y Desplazados* (Special Commission for the Attention to Refugees) was formed in order to supervise repatriation.¹⁰²

Yet even as the state attempted to convince refugees to make a voluntary repatriation, there was little interest in addressing the ideas underpinning the Guatemalan idea of "repatriation". Cerezo remained heavily dependent on military institutions and was unable to halt extrajudicial killing and other state-sponsored human rights abuses. Mejia Victores' proclamation of an amnesty as he left office for all political crimes committed during the four years of Rios Montt and Mejia Victores' governments added to a climate of impunity, as did Cerezo's interest in 'reconciliation and not revenge' which in practice meant a government uninterested in investigating alleged abuses of power or state terrorism. Refugees were seen to be particularly at risk because of their identification as "subversives". News of those who did choose to repatriate further fuelled refugee and displaced fear of further persecution on return: for example in San Pedro, El Estor, Izabal, eighty people resettled in 1986 persuaded by the democratic opening, but within months three had been kidnapped and one repatriate killed, while seven men had been forcibly recruited into the armed forces. Daily life continued under severe restrictions, with freedom of movement and expression significantly curtailed.¹⁰³

This reconstitution of an illiberal state was nonetheless justified in the dominant international political language of democratic change and popular sovereignty, particularly after a nominal return to civilian government in 1986 under Cerezo. For this reason repatriation was doubly required: both to complete the state's programme of expansion and population control and to offer the appearance of rapprochement between the displaced indigenous communities and the state, re-legitimising the Guatemalan state's claim to exercise sovereign power. It was equally clear that the state's interest in repatriation was not the initiation of any programme of political inclusion, but to ensure physical jurisdiction and authority over its returned population.

The international community showed little interest in deviating from its contemporary policies of repatriation facilitation, or of involving the refugees themselves in any political negotiation of the terms of repatriation. From 1984, the UNHCR had helped those who

¹⁰² Manz, B., *Repatriation and Reintegration: An Arduous Process in Guatemala*, Washington, 1988, p.34

¹⁰³ *ibid*, pp.19-44

indicated an intention to return to Guatemala from Mexico with logistical support, and in 1987 a tripartite agreement was signed between the UNHCR, Mexican and Guatemalan governments forming an official framework for repatriation. Repatriation was to be voluntary and individual (processed at the level of family units), concepts which as discussed formed a useful bulwark against any agitation for expedited return. However given the Mexican government's willingness to host the refugee population for the foreseeable future, and the continuing hostilities within Guatemala, such a concept was at least partially redundant, and did little to engage or advance any idea of "active" repatriation as a solution to the crisis of legitimacy facing the Guatemalan state and not only to the "refugee problem".

What is evident is that the majority of refugees refused the proffered programme of repatriation, and those displaced within Guatemala chose to remain outside state authority (in the case of the *Comunidades de Población en Resistencia* (Communities of Peoples in Resistance. CPR), highly organised political communities of internally displaced, this involved continued persecution by the state using methods such as aerial bombardment).¹⁰⁴ While the exact number of repatriated Guatemalans who returned between 1984 and the end of 1992 is unclear, the UNHCR-Guatemalan government Memorandum of Understanding signed on 13 November 1991 cites the repatriation of some 6000 under the tripartite programme between 1987 and 1991 and some 7000 prior returns '*por su propia cuenta*' between 1984 and 1987.¹⁰⁵ Even at the most conservative estimate, this left around forty thousand de jure refugees in Mexico.

Among those who later did return to Guatemala as part of the collective and organised process, the major reason for refusing earlier repatriation was cited as the lack of security: the refrain '*no había seguridad*'¹⁰⁶ was ubiquitous in explanations of why returnees had instead chosen to participate in collective bargaining which they believed would provide greater protection against the state. This idea of security was conceptualised in terms both of personal safety and access to land: underlying both fears was the refugees' traditional relationship with the Guatemalan state as oppressor rather than protector. The refugees saw no evidence that repatriation would mean anything other than a return to a newly expanded but still distant state: in contrast the idea of continued community development within the refugee camps was a means of promoting autonomy and the key value of '*auto-organización*'. What was being rejected however, was the content of state-controlled repatriation and not the prospect of return. As subsequent organisational developments made clear, the idea of return was increasingly understood not in the simple terms of community "home", but in more abstract political sense of national-state reconstitution.

Return and Autonomy

Even as Guatemalan refugees in Mexico were resisting state pressure to repatriate, they

¹⁰⁴ 'Communities of the Population in Resistance'; Interviews, Primavera en Ixcán, Guatemala, 22-23 June 2007

¹⁰⁵ 'on their own account': *Carta de entendimiento entre el gobierno de Guatemala y el ACNUR relativo a la repatriación voluntaria de los refugiados guatemaltecos* [Guatemala]. 13 November 1991, available online in UNHCR Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3dbe67d32> [accessed 6 December 2007]

¹⁰⁶ 'there was no security': Interviews, Guatemala and Mexico, June-July 2007.

were engaging in their own ideas concerning the nature of “return”, which resulted in 1987 in the election of representatives to *Comisiones Permanentes* (Permanent Commissions, CCPP), a body mandated to negotiate ‘*un retorno organizado y colectivo*’.¹⁰⁷ This was a highly significant political development with profound implications for both the practice and theory of repatriation, not least because it contained a demand for a direct, political negotiation of the terms of return between refugees and state. In many ways, it was this political context that was the most radical of the Guatemalan CCPP assertions. Their ‘*siete demandas*’¹⁰⁸ thus took on new significance as proposals for a political reconstitution of the Guatemalan nation-state and not simply requests for guarantees of security or “safety” in refugee return.

Indicating the extent to which the CCPP political involvement in the process of return was unwelcome, the Guatemalan government initially refused to recognise the group as the legitimate representative body of the Mexican refugees. Yet as early as 1989 the CCPP were receiving logistical support from the UNHCR, strengthening their claim to legitimacy further.¹⁰⁹ Using the skills acquired in the Mexican camps, the CCPP began to initiate dialogue within international fora, creating a role for the displaced as actors on an international stage dominated by states, international organisations and institutionally-recognised NGOs. This was first demonstrated by their intercession during the 1989 *Conferencia Internacional sobre Refugiados, Desplazados y Repatriados de Centro América* (International Conference on Central American Refugees, CIREFCA), which in itself marked a major international shift towards an integrated regional approach to solving displacement crises) to set out their own programme for return, guaranteeing security and land rights. As the CCPP programme for return became more coherent through the late 1980s, the government was eventually forced to recognise it as the legitimate representative of the Mexican refugees, partly as a result of increased publicity given to the difficulties faced by individual repatriates within Guatemala, such as PAC conscription.¹¹⁰ The key in opening up the political space for displaced-government negotiation, however, was clearly the international community’s involvement, as demonstrated by the narratives of internally displaced communities that attribute their eventual reintegration to publicity ‘*por hacer escuchar nuestra voz a nivel internacional primero, y posteriormente a nivel nacional*’.¹¹¹

The CCPP developed a distinct political philosophy, based on the concepts of autonomous *organización*, representative community democracy and the idea of *derechos* (rights). The refugee experience in exile was highly influential in the formation of such a

¹⁰⁷ ‘An organised and collective return’: *Acuerdo Suscrito entre las comisiones permanentes de representantes de los Refugiados Guatemaltecos en México y el Gobierno de Guatemala*, 8 October 1992, p.1

¹⁰⁸ ‘Seven demands’: CCPP/CEAR, *Acuerdos para Nuestro Retorno a Guatemala*, San Cristobal de las Casas, 1993

¹⁰⁹ Worby, P., *Refugee Return and Reintegration in Guatemala: Lessons Learned by UNHCR, 1987-1999*, Geneva, 2000, <http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.pdf>, [accessed 12 December 2007], p.3

¹¹⁰ *ibid.*

¹¹¹ ‘to make our voice heard first internationally, then later nationally’; *Declaracion Politica de la XXVII Asamblea General Ordinaria de la Comunidad Primavera del Ixcán*, 31 January 2006 (also 2004, 2005), My italics.

political conception of justice and citizenship. The idea of *organización* was not a new concept: it had formed the basis for many of the advancements made by the Ixcán and Petén colonists in the 1960s and 1970s, as seen in the formation of Agricultural Cooperatives. Centring on the concepts of collective and communal decision-making, the idea of *organización* combined the principles of communal democratic representation with the forces of bureaucracy to create a platform on which the peasants could engage the power of modernity. Yet the experience of exile in the camps provided the opportunity not only for significant technical capacity-building under UNHCR and the Comisión Mexicana de Ayuda a Refugiados (Mexican Commission on Assistance to Refugees, COMAR) auspices (particularly opportunities to learn Spanish, literacy and numeracy and basic healthcare skills), but also to link these ideas of local community democracy to liberal universalist concepts of human rights and state responsibility. Informants unanimously claimed that they had no knowledge of the concept of *derechos* prior to their time in Mexico, and that this education radically transformed their understanding of the racism and oppression suffered at the hands of the Guatemalan state. This human-rights context also offered the necessary framework to place their own experience within a global narrative, opening up links with international solidarity networks and global NGOs. ‘I was blind before I went to Mexico’, recalled one returnee: indeed, the experience of the Mexican refugee camps did represent for many of the refugees a form of Guatemalan Enlightenment.¹¹² If their flight to refuge was “a weapon of the weak”, exile itself allowed the displaced to re-arm with the power of human rights theory and ally themselves with global civil society, connecting local *organización* to international politics and equipping themselves with the modern skills necessary to engage directly with the Guatemalan state.¹¹³

Importantly, refuge also fostered collective political identity, creating new multi-ethnic space. Although the living quarters in camps were often divided upon former community (and therefore ethnic) lines, the communities themselves provided a forum for inter-ethnic exchange, facilitated by the refugees’ growing confidence in Spanish as not only an international but also a national lingua franca.¹¹⁴ The common experience of displacement provided a foundation for new imaginings of identity, which were provided with historical resonance through the identification of the exile with state suppression of the indigenous population and a construction of a narrative that connected the *tierra arrasada* (scorched earth) to the ravages of the first conquest, in part as a response to the education provided with the refugee camps.¹¹⁵ Crucially, this supra-ethnic identity was built upon political and economic experience and the group’s new understandings of their historical relations to the state. Due to this, the new idea of the indigenous Maya nation was no mere cultural identification but a political imagination firmly rooted in modernity and providing a multi-ethnic vision for a new Guatemala. What was arguably transformed was not the cultural identity of place but the displaced population’s relations to their formal political identity as *indígena* (indigenous).

¹¹² Interview, Santa María Tzeja, Guatemala, 25 June 2007

¹¹³ Interviews, Guatemala, June–July 2007. Also see Stepputat, F., ‘Repatriation and Everyday Forms of State Formation in Guatemala’ in Black and Khoser eds., *‘The End of the Refugee Cycle?’ Refugee Repatriation and Reconstruction*, Oxford, 1999

¹¹⁴ Interviews, Guatemala, June–July 2007

¹¹⁵ Interviews, Guatemala and Mexico, June–July 2007

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The landmark document of Guatemalan collective return, and the agreement which provides the most concrete illustration of the political theory underpinning this process, was the accord signed on 8 October 1992 between the Guatemalan government and the CCPP as ‘representatives of the Guatemalan refugees in Mexico’: this recognition of the CCPP as political representatives of this sector was in itself an important advance towards a pluralistic understanding of Guatemalan society in which relationships with the state could be mediated through the collective representation of civil society. The accord’s opening paragraphs attempted to address the tension between collective action and the individualist basis of human rights principles by stressing that ‘*el retorno debe ser una decision voluntaria, expresada individualmente y llevado a cabo en forma colectiva*’.¹¹⁸ This represented an attempt to synthesise the communitarian values of ‘*las comunidades indígenas*’ (indigenous communities) with the international norms of protection organisations such as the UNHCR.¹¹⁹ The refugees, however, were also described as a ‘*pueblo*’ (people), in article 1C of the 8 October Accord, an assertion of collective identity that reinforced the group’s power and autonomy in deciding ‘*cuándo, cómo y adónde sera el retorno*’,¹²⁰ shifting return away from the grip of international and state-institutional structures into the control of popular-local power groupings.

¹¹⁶ Worby, P. (2000) *Refugee Return and Reintegration in Guatemala: Lessons Learned by UNHCR, 1987-1999*, Geneva, UNHCR <http://www.unhcr.org/cgi-bin/texis/vtx/research/openssl.pdf>, [accessed 12 December 2007], p.3

¹¹⁷ *ibid.*

¹¹⁸ ‘return must be a voluntary decision, individually expressed and realised collectively.’ *Acuerdo Suscrito entre las comisiones permanentes...y el gobierno*, 8 October 1992, p.1

¹¹⁹ Interviews suggested that this process of individual choice was largely unproblematic, with many recounting incidences of generational splits between those who chose to return and those remaining in Mexico. However the freedom of female choice was more questionable, with at least two female informants suggesting that their choice was heavily influenced by their husband’s wishes to stay/leave Mexico.

¹²⁰ ‘when, how and to where the return will occur’, *Acuerdo Suscrito entre las comisiones permanentes...y el gobierno*, 8 October 1992, p.1.

The refugees saw the 8 October Accords as moving towards an idea that state power was to be mediated and limited by concepts of communal citizenship. In particular, the obligations of the refugees to participate in state-military organisation were waived, both in relation to PAC (which had already been agreed in the November 1991 Memorandum of Understanding between the UNHCR and Guatemalan government) and the policy of compulsory national military service. The latter obligation was waived for three years (in the first instance, although never subsequently reinstated) officially in order to facilitate community development through '*reasentamiento, reconstrucción y reintegración*'.¹²¹ This demilitarisation of state-returnee relations demonstrated the shift in power towards civil society and away from state structures that were now historically identified with internal oppression: the militarised state was retreating as civil society used the powers of the idea of 'voluntary return' to occupy Guatemalan political space. The other key plank of the accords was the complex mechanism put in place to ensure returnee access to land within Guatemala, which played a key role in the refugees' understandings of indigenous identity as well as their economic subsistence.

The first collective return of refugees from Mexico to Guatemala occurred in January 1993, when 2500 displaced persons crossed the border in a public political caravan, touring the country before arriving at the site for the first settlement in the Peten, named Victoria 20 de Enero to commemorate the historical significance of return. This was symbolic repatriation and not mere physical return: as the UNHCR's assessment of the process in 1999 recognised, 'every decision...logistical and otherwise, became a political debate between the returnees and the government'.¹²² The refugees were concerned with return as a visible process, a triumphant procession that required a symbolic visit to Guatemala City and public acclamation. The government, on the other hand, was interested in a swift and silent return to the geographically isolated regions of resettlement. This political row, a direct confrontation between the refugee collective groups and state interests, indicated the extent to which the government's agreement to the terms of the 8 October accords had been at best reluctant. The fact that it was the refugees who also won the political battle over the public route of the caravan demonstrated their effective use of the international theory of "voluntariness" as an instrument of power within the process of return. Those who participated in this first, symbolic return remember its impact as a '*golpe politico*', important both as a means of proclaiming legality but also as a means of family reunification.¹²³

Return was undoubtedly not only a process of community rapprochement between refugee groups and the Guatemalan state: it also acted as a catalyst for the agreement of a wider peace agreement between the URNG and Guatemalan state and army. In 1994, two further accords were agreed between the URNG and the Guatemalan government as part of the Peace settlement that reinforced the legal rights of the displaced populations and their (overlapping) rights as indigenous communities. The 'Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict' was signed on 17 June

¹²¹ 'resettlement, reconstruction and reintegration', *ibid*, p.2

¹²² Worby, P., *Refugee Return and Reintegration in Guatemala*, p.3

¹²³ 'political coup': Interviews, Santa Maria Tzeja, 25 June, 2007

1994.¹²⁴ Most importantly, this document widened the application of the CCPP-obtained guarantees on government reintegration practices to all uprooted groups, including the CPR (although this excluded land-credit arrangements). The accords stressed again the need for autonomy and popular participation in decision-making as one of the six main principles underlying voluntary *return* (deliberately labelled as such and not as repatriation), as well as recognising the need for reconciliation between resettled and residential population areas. The UNHCR's assessment of the Guatemalan return recognised that the example of the CCPPs demonstrated the potential for repatriation to form an integral part of peace-making processes as a durable solution to displacement because of the refugees own involvement in political negotiation; they were 'agents of change rather than objects of charity'¹²⁵.

Reintegration and the Meaning of "Guatemala"

Assessment of the Guatemalan return was initially largely positive: COMAR called the operation '*una experiencia de cooperación ejemplar en el mundo y un logro sin precedentes*',¹²⁶ while the UNHCR's two published assessments of their role in return, following various 'lessons learned' exercises, also generally stressed the success of the action of return, although they displaying a more nuanced view of success in the medium-term field of reintegration and reconciliation, highlighting the difficulties inherent in the transition from return as a political object for negotiation to a social and developmental reality.¹²⁷ However, in the ensuing decade following the first return in 1993, the difficulties of reintegration and effecting genuine state transformation became increasingly evident. Today, nearly fifteen years after the first Guatemalan return, its failure to effect wide-ranging transformation of state structures is obvious, as are the wider failings of the peace process that culminated in December 1996. The Guatemalan state continues to be controlled by the economic elite and act in their interests rather than those of the wider citizenry.¹²⁸ Corruption is endemic and the rule of law fragile, resulting in a culture of impunity.¹²⁹ Elections in September 2007 were plagued with allegations of bribery, intimidation and politically-motivated assassination.¹³⁰ Among those interviewed, there was a general consensus that Guatemala was a brittle or even failing state, incapable of providing security to its citizens, a conclusion reinforced by

¹²⁴ *Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict*, Oslo, 17 June 1994, http://www.usip.org/library/pa/guatemala/guat_940617.html, [accessed 12 December 2007]

¹²⁵ Jamal, A., *Refugee Return and Reintegration in Guatemala: Lessons Learned by UNHCR*, September 2000, <http://www.unhcr.org/research/RESEARCH/3ae6bd4510.pdf>, [accessed 12 December 2007], p.2

¹²⁶ 'An exemplary experience of [inter-state] co-operation and an unprecedented achievement': COMAR, *Mexico: tradición de asilio y refugio*, Mexico City, November 2000

¹²⁷ Worby, *Refugee Return and Reintegration in Guatemala*; Jamal, *Refugee Return and Reintegration in Guatemala*

¹²⁸ *Primer balance de Acuerdos de Paz*, 2004, unpublished

¹²⁹ Corruption Perception Index 2007, http://www.transparency.org/policy_research/surveys_indices/cpi, [accessed 17 October 2007]

¹³⁰ *Guatemala Heads for Run-off vote*, 10 September 2007, BBC News, <http://news.bbc.co.uk/1/hi/world/americas/6986834.stm>, [accessed 17 October 2007]

international governance assessment.¹³¹

However, the returnee movement places the idea of continuing struggle, or '*la lucha*' at the centre of its political ideology. In every community visited, political leaders spoke of return as one action in a process of continued resistance to the state-elite compact: '*sigamos luchando*', '*la lucha no ha terminado*', '*actualmente estamos luchando*'.¹³² Understood in this sense, the 8 October accords and the collective returns of 1993-1999 are represented as part of a continuing struggle to create a Guatemalan state at the service of the Guatemalan nation. Reiss documented in her 2000 study the prevalent attitude that 'return is struggle not resignation'.¹³³ a more accurate depiction of attitudes in 2007 would be that the returnees are now resigned to perpetual struggle. While the degree of vehemence varied, the returnees interviewed were universal in their condemnation of the Guatemalan government's exercise of the state's powers. '*La ley es bonita, pero la practica es otra cosa*'¹³⁴ was an accurate summary of returnees' political perceptions. This resignation to the state's corruption and weakness as an endemic characteristic does not mark out the returnees from other rural, indigenous, peasant communities. However, this research suggests that the process of exile and return has had a significant impact on the returnees' expectations of state behaviour. This has resulted in two key developments: the use of international law and global civil society to attempt to call the Guatemalan state to account and the use of local grass-roots activism to wrest political autonomy from an uninterested state.

The rejection of repatriation plans in favour of more autonomous return has provided for the construction of new networks that bypass state facilitation, instead focusing on community autonomy and international solidarity. To provide just one example, in the returnee community of Santa Maria Tzeja, a project to build a pharmacy with EU funding and community labour represents a new idea of community-based global citizenship that bypasses the Guatemalan state's infrastructural incapacity: as the auxiliary mayor commented, '*no vamos a esperar hasta que el estado venga*'.¹³⁵ Scorn for the state was almost universal among returnees interviewed, who characterised it as the instrument of the elite, run by '*los grandes perros de los grandes ricos*'.¹³⁶ State alienation has thus been met, through return, by the creation of multi-layered spaces outside its political control which became accessible to the returnees because of their role as political agents in negotiating their own return and their exposure to such networks whilst in exile. Yet although both strands of activity are intended to undermine the existing Guatemalan

¹³¹ Failed State Index 2006, <http://www.fundforpeace.org/programs/fsi/fsindex2006.php>. [accessed 17 October 2007]

¹³² 'we are continuing the struggle' 'the struggle has not finished' 'right now we are fighting'; interviews, Guatemala, June-July 2007

¹³³ Riess, S., 'Return is Struggle, Not Resignation: Lessons from the Repatriation of Guatemalan Refugees from Mexico', *UNHCR New Issues in Refugee Research Working Paper No. 21.*, 2000 <http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.pdf?tbl=RESEARCH&id=3ae6a0c97>. [accessed 20 September 2007]

¹³⁴ 'The law is good, but in practice it's different', interview, Chacula, 4 July 2007

¹³⁵ 'We are not going to wait until the state arrives', interview, *alcalde auxiliar*, Santa Maria Tzeja, 25 June 2007

¹³⁶ 'the rich's bitches', interview, Primavera, 22 June 2007

state's authority, it is important to stress that the idea of the state remains central to returnee political theory: the hope is that global-local connections can be used to build a new, reformed Guatemala.

Indeed, what is most remarkable is the extent to which Guatemalan returnee communities have separated the idea of “state” – ineffective political institutions – from the idea of “nation” – the location of popular sovereignty. This body of thought can be traced back at least as far as 1986, when in two letters addressed to President Cerezo refusing repatriation, refugee representatives specifically stated that their fear of return was ‘not the fault of the *patria*’ but of its governors, concluding ‘we love our country’.¹³⁷ Even the contemporary annual petitions of the most radicalised community, Primavera en Ixcán, should be considered as a form of national-community dialogue attempting to reform relations with the state: every petition ends with the words ‘*por la constitución de la Guatemala pluricultural y democrática*’.¹³⁸ Similarly, every returnee interviewed described themselves, without hesitation or reservation, as ‘*Guatemalteco, después de todo*’.¹³⁹ The process of collective return, then, even as it was presented as an explicit rejection of “repatriation” as defined by the government, did not result in the resettlement of communities outside of the nation-state complex. Instead, by transferring the political and communitarian structures of exile back to Guatemala, voluntary return can in fact be argued to have promoted a form of *empatriation*. The idea of *empatriation* can be understood as connected to the experiences of Guatemalan communities intent on building new and previously absent meanings into the idea of “nation-state” which more accurately reflect the political ideals of universal human rights distributed through access to nation-state citizenship.

Implications for the International Political Theory of Repatriation

Guatemalan return provides the foundation for an empirically-based political rethinking of the meaning of repatriation: it offers several important adjuncts to traditional practices of repatriation that suggest a need to withdraw from post-Cold War pathways towards a depoliticised idea of return, and instead embrace participatory repatriation as an expression of both liberal and national rights and abilities to transform failing, distant or even hostile states.

Firstly, Guatemalan return indicates the extent to which a direct process of negotiation involving refugees as political agents can help to make the process of return meaningful. By providing refugees with agency to determine the conditions under which they would return to Guatemala, the process was transformed from a state-based directive aimed at securing political stabilisation and extending state control to one in which the content of state power could be debated: a necessary peace-making process given Guatemalans’ historic exclusion from their own state. The UNHCR’s assessments were also clear that Guatemalan return demonstrated the extent to which the process of return could be used

¹³⁷ Manz, *Refugees of a Hidden War*, Appendix E, pp.212-214

¹³⁸ for the construction of a pluricultural and democratic Guatemala’ *Declaración Política de la XXVII Asamblea General Ordinaria de la Comunidad Primavera del Ixcán*, 31 January 2006 (also 2004, 2005)

¹³⁹ ‘Guatemalan, after everything’ Interviews, Guatemala, June-July 2007

as a catalyst to peace.¹⁴⁰ Furthermore, as Bradley's work on the concept of "dignity" has demonstrated, the core of any imagination of such a concept must be some degree of autonomous choice for the refugee.¹⁴¹ Repatriation as direct political negotiation helps to make the concept of "dignity" meaningful because it replaces the relatively empty terminology (in today's political climate) of "voluntariness" as a choice between repatriation and resettlement with the idea of participatory decision-making culminating in return: dignity is thus realised not only through the act of return, but also through the process of deciding upon the content and timing of return.

The process of direct political negotiation also helps to place the idea of "safety" within a paradigm of "dignified return" as opposed to one of external objective assessment: by providing refugee groups with the political space in which to shape some of the conditions of their return to country of origin, "safety" becomes a refugee-led subjective assessment. While this approach has long been advocated in terms of respecting spontaneous repatriation,¹⁴² the introduction of a formal political process of representation would aid its introduction into officially-assisted return based on the application of the liberal principle of freedom of choice. "Dignified" return would necessarily mean safe return: it would also necessarily mean non-forcible return. As demonstrated in the case of Guatemala, "voluntariness" might more properly be understood for those actively repatriating as the ability to determine the content, timing and manner of return: among informants, it was noticeable that "voluntariness" was a more important philosophical idea for those who had chosen to remain in Mexico than those who had returned to Guatemala, who often contextualised their return as a *duty* to build a new Guatemala, and for whom dignity resided in their ability to shape the nature of this return rather than in any simple right to choose between return or resettlement.¹⁴³

Indeed, the suitability of the term "repatriation" might also be questioned due its implicit assumption of a previously existing relationship between territorial entity, political nation and refugee-citizen. The Guatemalan refugees had been historically excluded from both nation and state: they were not citizens but marginalised subjects, despite the Guatemalan government's claims (especially from the mid-1980s) to legitimacy through the principles of liberal democracy. What occurred through the work of the CCPP and the agreements of collective return that deliberately sought to reform the state's political institutions and create a basis for inclusive citizenship were not steps towards repatriation – the healing of the breach between a national community and the state – but *empatriation* – a new embedding of the state as servant and protector of an inclusive national community. While the mechanics of physical return remained logistically similar to previous operations, this distinction in political foundation is important because it undercuts the historical assumptions of the "naturalness" of national-state identity and implicitly recognises its political constitution through the explicit formation of what is effectively a

¹⁴⁰ Jamal, A., *Refugee Return and Reintegration in Guatemala: Lessons Learned by UNHCR*, September 2000, <http://www.unhcr.org/research/RESEARCH/3ae6bd4510.pdf>; Worby, P., (2000) *Refugee Return and Reintegration in Guatemala: Lessons Learned by UNHCR, 1987-1999*, Geneva, <http://www.unhcr.org/cgi-bin/txis/vtx/research/opensoc.pdf>

¹⁴¹ Bradley, *Return in Dignity*, RSC Working Paper No.40, pp.8-10

¹⁴² Cuny and Stein, *The Contemporary Practice of Voluntary Repatriation*

¹⁴³ Interviews, Chacula, Guatemala, 2 July 2007

new social contract between the refugee community or communities and the state of origin. It also suggests a need for renewed emphasis on the reconstitution of the state as political body as part of the process for return: *empatriation*, by creating a new relationship between people and state, offers increased opportunities for return as a durable solution. Crucially, *empatriation* should be seen as a dual-subject concept – it affects not only refugees returning to state territory, but also implies the *empatriation*, or nationalisation of the state itself.

The Guatemalan return also stresses the importance of reconceptualising *empatriation* as involving community and group collectivity. Return was a collective, community-based decision for those who returned as part of the CCPP process, and the community retains its importance as the relevant political unit in rural Guatemala today.¹⁴⁴ As Stolen's work has demonstrated, the process of return created the new identity of *retornado* (returnee), which broke from an ethnic and fragmented conception of indigenous identity to create a more unified understanding of indigenous identity based on common historical experience of repression and peasant solidarity.¹⁴⁵ This basis of political identity in wider indigenous community not only provided the platform for the reclamation of a national identity, but also redistributed power away from the state as the embodiment of any collective national personality back to the refugee *pueblo*. A basic consideration of the power dynamics of negotiation also indicate the importance of recognising some form of refugee group or national identity within the process of *empatriation*: it is only as a group that both practically and philosophically the state's claim to exercise legitimate and exclusionary power through the ruling political class can be challenged and power redistributed to other constituent groups.

Furthermore, recognition of collective, group identity in the negotiation of return is particularly logical given the causes of flight: the Guatemalan refugees on the Mexican border largely fled because of their collective identities as indigenous *campesinos*. Ethnic-cultural persecution explicitly attacks the collective group and its shared meanings, not only individual dignity. Creating conditions for the inclusion of refugee groups within the politics of return provides a pathway for the restoration not only of individual but group-national status within the states-system: it is arguable that the rights of a people can not be returned only to the individual person, but must also acknowledge a restoration of group status. This suggests a need for a return to study Nansen's group-based refugee qualifications and their foundations in political thought.

Despite the shift in political power towards refugee autonomy and away from state-managed practices of repatriation, the international community played an essential role 'promoting dialogue... facilitating communication... and acting as an intermediary or a channel of communication'¹⁴⁶ between Guatemalan state/army and the CCPP. In recognising the CCPP as legitimate representatives of the refugees in Mexico and supporting the right of the Guatemalan refugees to negotiate collective return, the international community helped to redistribute power between refugees and state to

¹⁴⁴ Interviews, Guatemala, June-July 2007

¹⁴⁵ Stolen, K.A, 'Contradictory notions of the state : returned refugees in Guatemala' in Khron-Hansen C. and Nustad K., *State formation: anthropological perspectives*, London 2005

¹⁴⁶ Paragraph E, UNHCR Executive Committee, *Conclusion No.40*, 1985

provide the impetus for negotiation. Still more important was the Mexican state's offer of long-term asylum that provided both the geographic and temporal space for negotiations of return between parties, and also provided an environment favouring political education in the rights and duties of liberal democracy. This version of exile as empowering was particularly important in creating the conditions for negotiated return. This reaffirms the international community's crucial role in the promotion of the conditions for *empatriation* through education in exile and the essential provision of non-permanent asylum focused offering sufficient security from the threat of premature return to allow equal political negotiations creating the conditions for *empatriated* return.

The international community also has a vital role to play during the process of reintegration, particularly in ensuring multilateral compliance with all accords agreed between refugee groups and the state prior to return. The importance placed on the presence of the international observers as safeguards against state oppression in the 8 October 1992 accords indicate the extent to which the doctrine of "sovereignty as responsibility" requires physical and visible enforcement by the presence of the international community as a powerful moral agent.¹⁴⁷ Guatemalan returnees remain highly suspicious of the state and talk of their observers as the '*ojos del mundo*', preventing the state from exercising restrictive sovereignty.¹⁴⁸ However, more international pressure is clearly needed to create the conditions for positive and involved sovereignty: the Guatemalan state is largely uninterested in returnee communities, who are often supported instead by aid and development projects established by NGOs rather than the state. The clearest failing of the international community in the Guatemalan peace process was a rapid decline in interest following the "culmination" of the process in 1996 and a consequent absence of political pressure to ensure state-strengthening or *empatriation* of state institutions.

Interestingly, some form of precedent for the Guatemalan collective return can be found in the Mesa Grande return to El Salvador from Honduras in 1987. Some 4500 Salvadorian refugees, who were more closely associated with the left wing *Frente Farabundo Martí para la Liberación Nacional* or Farabundo Martí National Liberation Front (FMLN) than the Guatemalan refugees with the equivalent Guatemalan guerrilla forces, announced their intentions to return home in January 1987, laying out minimum conditions for return which included a return to their place of origin, exemption from military service, freedom of movement and the right to international assistance.¹⁴⁹ The Salvadorian government resisted any response, suspecting return was a cover for the FMLN's intentions to rebuild human support structures. Yet politically, the government's alleged democratic basis made it impossible to refuse a right to return to exiles and the signing of the Arias Peace Plan on 7 August required governments to facilitate repatriation. On 10-11 October the Mesa Grande refugees returned to Salvador: but they did so with only one of their earlier conditions met, that of a return to their places of origin.¹⁵⁰ The UNHCR's own political weakness, combined with strong US interests in the outcome of the Salvadorian civil war meant that the refugees' bid for a political stake in the negotiation of

¹⁴⁷ Article 3, '*Acuerdo Suscrito entre las comisiones permanentes...y el gobierno*', 8 October 1992, p.2

¹⁴⁸ 'eyes of the world: Interview, Santa Maria Tzeja, Guatemala, 24 June 2007

¹⁴⁹ Reid, *Political Studies in the Voluntary Repatriation of Refugees*, p.207

¹⁵⁰ *ibid.*

return received little support or interest, and consequently failed. This underlines the need for strong international support for any programme of repatriation as *empatriation*, or directly negotiated political return.

5 Towards a Conclusion: *Empatriation* as a New Social Contract?

Both the history of the political foundations of repatriation and the post-Cold War example of “successful” return in Guatemala indicate the extent to which repatriation must be viewed as above all a political idea, concerned with rapprochement between citizen, nation and state. One body of political theory which may offer a means of conceptualising this process of political repatriation is the tradition of the social contract.

In brief, social contract theory explains and legitimises the state’s existence by reference to the notion of consent. It posits that the state was established by the agreement of the individuals within a territory to create one body politic, pooling personal sovereignty with the aim of securing protection from the brutalities of the state of nature through the creation of a sovereign state with authority over its individual citizens.¹⁵¹ Such a conceptualisation remains extremely attractive within liberal polities as it bases the authority of the state in the original sovereignty of the people, and requires that the state fulfil a duty of protection towards its inhabitants in order to retain its legitimate monopoly on the exercise of political power.¹⁵² However, there are several obvious critiques of social contract theory, beginning with Hume’s observation that the historical narrative of the social contract is mythical: the moment of the social contract is an abstract theoretical device and carries no historical explanatory value.¹⁵³ Furthermore, this lack of explicit consent cannot be suitably circumvented by appealing to theories of implied consent: how can the (implied) consent of one generation perpetually bind subsequent citizens? Birth alone is not a sufficient explanation, because the only means by which to remove oneself from a particular sovereign state is through emigration, an overly-severe remedy.¹⁵⁴

Yet when applied to the processes of repatriation, many of these objections against the usefulness of social contract theory are in fact less persuasive. In particular, if Shacknové’s understanding of a refugee as defined not by persecution or alienage but by the absence or rupture of a protective bond with the state or origin is used, refugee qualification depends

¹⁵¹ Social contract theory has a long history at the centre of Western political thought: its development can be traced through Hobbes *Leviathan*; Locke [Two Treatises of Government](#); Rousseau *The Social Contract*; towards more modern accounts such as Rawls *A Theory of Justice*. A useful summary is contained in Kymlicka, W., ‘The Social Contract Tradition’ in Singer, P. ed., *A Companion to Ethics*, Oxford, 1991

¹⁵² Kymlicka, ‘The Social Contract Tradition’, p.186

¹⁵³ *ibid.*, p.187

¹⁵⁴ Simmons J., *Tacit Consent and Political Obligation*, *Philosophy and Public Affairs* Vol. 5 No. 3, Spring 1976, pp.280-281

upon the breaking of the social contract.¹⁵⁵ This places the notion of the social contract and consequent state responsibility for citizen protection at the centre of refugee identity, which can be seen to encompass the experiences of Internally Displaced Peoples who suffer the same political alienation from the state as refugees who cross an international border.

The logic of repatriation assumes a previous relationship between state and its citizens. Yet the reality in many refugee-producing states, particularly in the post-colonial global south, is that this relationship between state and people has never existed, despite the ruling elite's recourse to the language of nation-statehood in the interests of international political legitimation. The process of return, if considered as *empatriation*, offers an opportunity to make real this connection between nation and state. Because the process of return rests upon direct political negotiation, the new social contract is explicitly recognised as such by both parties: the physical act of return and reintegration into the fabric of state-social relations represents explicit consent to a reconstitution of the citizen-state relationship by both parties, symbolised through the deliberate political act of return. This indicates that for return to offer political transformation, it must be a process of "official" and visible repatriation. The 8 October 1992 accords in effect acted as a form of new social contract for the refugee communities of Guatemala: today, complaints about the lack of government presence or interest in the communities are articulated using the language of contract and references back to the accords from 1992-1996 and the government's failure to fulfil its *agreed* obligations.

It is also clear that in both historical and political terms, refugee populations must be understood not only in the paradigm of liberal universalism and individual human rights, but also within a wider setting of group or national identity and collective political power. The state cannot be assumed to be immediately analogous with national society or societies. As demonstrated in Guatemala, national communities persecuted as a result of their collective characteristics and with the aim of permanent exclusion from the political nation of the state must move towards inclusion not only on the basis of individual rights but also communal recognition. This suggests that *empatriation* should be understood as a rapprochement between nation(s) and state, and not simply citizen and state.

This is a far more difficult problem to resolve: how can social contract theory be related to the relationships between groups, or nations, and states? Traditional accounts of the social contract have emphasised the consent of every individual as necessary to the formation of the state. This would appear to prevent the application of social contract traditions to the collective basis of refugee *empatriation*. However, a possible solution lies in the Lockean account of a double contract, the first creating society, or the state, and the second determining its political laws.¹⁵⁶ This second contract can be seen as bilateral (thus providing, for Locke, the possibility of righteous disobedience). In terms of refugee displacement and *empatriation*, this fits in neatly with the idea of a rupture (or absence of any historical relationship) between "state" and a pre-constituted "nation" as the cause of exodus, as well as providing a basis for equal political negotiation to resolve alienation of nation from state and vice versa.

¹⁵⁵ Shacknove, A., *Who is a Refugee?*, *Ethics* 95 (2), p.277

¹⁵⁶ Harrison, R., *Hobbes, Locke and Confusion's Masterpiece*, Cambridge, 2003, pp.163-218

This projected reformulation of the social contract device to include some degree of group-based remaking is immediately open to numerous objections. Most obviously, it raises questions about the difficult balance within liberal societies between group and individual rights and identities:¹⁵⁷ while there is no complete or easy answer to this question, it should be recognised that CCPP representatives in Guatemala were elected through grass-roots community democracy, a process at least as representative as that by which those who exercise state political power are chosen in most Western states. There is similarly a question of the relationship between the relative powers of the internally and externally displaced, and between these groups and those who remain in their place of residence during persecution or state conflict in terms of their ability to hold the state to a just settlement. Inequitable and uneven empatriation processes are far less likely to result in stable and durable solutions for all a state's citizens. There are also concerns about whether multi-national states are viable in a democratic age of equality: this problem would appear to hinge on whether sufficient bedrock of what has been termed "civic nationalism" can be embedded within state structures to provide unifying political principles, a process which requires a capable and strong state. Again, the Guatemalan example suggests that the problem was not the communities' willingness to play a role in national "Guatemalan" political space or identity, but the state's capacity for inclusion, directly confronted through political repatriation.

Given the realities of the present-day international nation-states system, a political analysis of return theory suggests that this idea of empatriation offers the best approach to repatriation in the hope of durable solutions. This is for four reasons: firstly, it offers a political settlement concerned with rights and state reform, rather than just the concept of "home". Secondly, it provides refugees with political agency rather than considering them as merely socio-economic recipients of reintegration: this encourages a fuller understanding of the values of both autonomy and continued political engagement post-return. Thirdly, an understanding of empatriation recognises the fundamental link between the exclusivity of nation-state political organisation and rights distribution and refugee exodus, and seeks to reform the structures of political community. This means that fourthly, *empatriation* is above all a means to secure ethical *repatriation* – in recognising group rights, and creating a model for return as the making of new pluralist contracts between state and society, it provides refugees with the political foundations for dignified return, and the potential to secure their freedoms as both citizen and community.

¹⁵⁷ This is a major area in contemporary political and philosophical discussion: useful works include Parekh, B., *Rethinking multiculturalism: cultural diversity and political theory*, Basingstoke, 2000 and Kymlicka, W., *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, Oxford, 2001

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